

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

RALPH and BETTY BARNETT, ATLAS	}	
DRILLING AND EXPLORATION, INC.,	}	
and JAMES DAVID CARMAN,	}	
	}	
Appellants,	}	PCHB Nos. 90-70 & 72
	}	
v.	}	
	}	FINAL FINDINGS OF FACT,
State of Washington DEPARTMENT	}	CONCLUSIONS OF LAW
OF ECOLOGY,	}	AND ORDER
	}	
Respondent.	}	

These appeals contest Department of Ecology Orders Nos. DE 90-C129 (Carman), DE 90-C142 (Atlas Drilling and Exploration, Inc.) and DE 90-C143 (Barnett). The orders direct individuals and a company to abandon a well in accordance with Chapt. 173-160 WAC.

This matter concluded on November 9, 1990 with the last exhibit's admission. Closing argument was filed on October 23, 1990. The formal hearing on the merits was held in Cle Elum on August 24, 1990 and in Ellensburg on October 2, 1990. Present for the Board were Members Judith A. Bendor, chair, and Harold S. Zimmerman. Both members have reviewed the record.

Prior to the hearing, on August 17, 1990, the Department of Ecology ("DOE") filed a motion, memorandum and documents in support of dismissal, alleging that James Carman had failed to timely file his appeal within 30 days. The Board deferred ruling on the matter and at the hearing heard testimony and argument on this issue.

1 At the hearing appellants Ralph and Betty Barnett were
2 represented by Attorney Richard T. Cole (Cone, Gileath, Ellis, Cole &
3 Korte; Ellensburg). Appellant Atlas was represented by Attorney Carl
4 J. Oreskovich (Hemovich, Nappi, Oreskovich & Butler; Spokane).
5 Appellant James David Carman was represented by Attorney Roger K.
6 Garrison (Sunnyside). Respondent Department of Ecology (DOE) was
7 represented on August 24, 1990 by Rule 9 Interns Karen Charvet and
8 Mike Zevenbergen and Assistant Attorney General Thomas P. McDonald,
9 and on October 2, 1990 and thereafter by Mr. McDonald. Court
10 reporters affiliated with Gene S. Barker (Olympia) took the
11 proceedings, including Ms. Jeanne M. Voie (Yakima) on the second day.

12 Witnesses were sworn and testified. Exhibits were admitted and
13 examined. Oral and written argument were made. From these, the Board
14 makes these:

15 FINDINGS OF FACT

16 I

17 Ralph and Betty Barnett own 30 acres of property in Kittitas
18 County (located within SE 1/4 SE 1/4 of Section 22 T. 18 N., R. 20
19 E.W.M). The well at issue is on their property, near Parke Creek. In
20 August 1990 the Barnetts established their principal residence on this
21 property.

22 Atlas Drilling and Exploration, Inc. (Atlas) is and was an Idaho
23 corporation. It was licensed as a well contractor in the State
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1 f Washington from at least October 21, 1988 to April 30, 1990.
2 Shareholders Harry C. Mohlman and Lysianne Mohlman are the President
3 and Vice-President repectively. The other shareholders are Diane
4 Leggett and Dr. Joe Edward Leggett, Sr.; they initially capitalized
5 the company. Atlas is both family-owned and operated. D. Leggett
6 paid the bills, did the payroll, worked with the accountant and
7 communicated with the banks. H. Mohlman otherwise generally operated
8 the company on a day-to-day basis.

9 James David Carman is a well driller, licensed in the states of
10 Wahington, Idaho and Nevada. In December 1989 he drilled a well for
11 the Barnetts on their Kittitas County property.

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13 In December 1989 the Barnetts saw an advertisement under Atlas'
14 name in a local newspaper and called. Carman returned their call and
15 drove to their property in a truck bearing the Atlas logo on the
16 side. The Barnetts explained they wanted an artesian well, to keep
17 the pumping costs low. They are on a fixed income. Mr. Barnett
18 signed a contract with Carman on an Atlas form, and gave him a \$1,000
19 deposit. The contract called for a well with an estimated depth of
20 180 to 220 feet.

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2 was aware that artesian wells existed in the Parke Creek area of the
3 county.

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5 December 6, 1989. He mailed a start card from Spokane to the DOE
6 office, which was received December 11, 1990. The start card listed
7 Atlas as the company and provided their contractor registration number.

8 During the drilling Carman used an Atlas truck and an Atlas
9 cable rigger. Both had Atlas identification on the outside.

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11 The well began in a basalt formation, passed through a clay layer
12 at 135 to 140 feet, and re-entered basalt. Carman found water from 85
13 to 180 feet. There was a lot of water pressure, as Carman described
14 "big water". He drilled to about the 210 foot level. The static
15 water level rose to 30 feet from the top. The well was 8 to 9 inches
16 in diameter from the surface down to the 40 foot level, and 6 inches
17 in diameter below the 40 foot level. A liner was inserted to the 40
18 foot level. There is no evidence that Carman used a stabilizer when
19 he inserted the 40 feet of liner, to ensure that it was centered in
20 the well hole. Use of a stabilizer is common practice in Washington.
21 The liner was not centered in the well hole.

22 Carman dumped cement grout down the well in the space between the
23 liner and the perimeter of the well hole. He did not pressure grout
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2 contended his cement equipment was not working. A subsequent DOE
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4 of the hole. For the first foot the grouting did not exist on one
5 side and was only 2 inches in thickness.

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8 deposit check made out to Atlas for more liner, which he subsequently
9 bought but did not install.

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11 The Barnetts called the DOE on December 14, 1990, concerned about
12 the progress of the drilling. The next day DOE inspected the well and
13 discovered the grouting situation. The Department posted the well,
14 prohibiting further construction.

15 On December 21, 1989, DOE, with Carman present, ran a video scan
16 down the well. The scan revealed that the well had collapsed at the
17 98 foot level. Water was migrating up from the bottom, and outward
18 laterally in an area of fractured basalt at about the 84 to 90 foot
19 level.

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21 Pressure grouting from the bottom and providing a continuous
22 grout between the liner and the outside of the well hole seals a
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1 the well and contaminating the groundwater. Moreover, it prevents
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19 to continue drilling wells in Washington. The Barnett job was a new
20 job, not one of those that remained to be completed. Carman did not
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22 In January 1990 Carman called and told Dr. Leggett where he had
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1 On January 16, 1990, after receiving an anonymous tip, Atlas
2 wrote DOE and stated they were in the process of dissolving Atlas
3 "and did not want any individual operating as Atlas Drilling and
4 Exploration, Inc." Exh. R-30. Atlas learned about the Barnett well
5 in March 1990. In October 1990 Atlas was still an Idaho corporation.

6 VIII

7 On April 6, 1990 DOE issued Order No. DE 90-C143 to the Barnetts
8 and DE 90-C142 to Atlas. The Orders required the well to be abandoned
9 in accordance with Chapt. 173-160 WAC. The Barnetts' appeal to the
10 Pollution Control Hearings Board became PCHB No. 90-70. The Atlas
11 appeal became PCHB 90-72.

12 On April 6, 1990 DOE issued Order No. DE 90-129 to James David
13 Carman, also requiring well abandonment. On April 9, 1990 Carman
14 personally received a copy of the order during a visit to the DOE
15 regional office in Yakima. The Board sent a letter on April 25, 1990
16 to: the Barnetts, Atlas' lawyer, the DOE, and Mr. Carman at an Idaho
17 address, consolidating the Barnett and Atlas appeals and noting that
18 Carman had not yet filed an appeal. The Board received Carman's
19 appeal on Friday, May 10, 1990, 31 days after April 9, 1990. All
20 parties or their representatives were present during telephone
21 pre-hearing conference on May 21, 1990 and June 7, 1990. Carman was
22 in the hospital for two weeks with a nervous breakdown, leaving in
23 June, 1990.

IX

DOE's expert testified that the well should be properly abandoned. However, he also conceded that it could be properly rehabilitated, though at considerable expense. Appellants provided no factual evidence on rehabilitation.

X

Any Conclusion of Law deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board makes these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues, and over appellants Barnett and Atlas Drilling and Exploration, Inc. RCW 18.104.130; WAC 173-160-125, and RCW 43.21B.310.

The Board concludes it does not have jurisdiction over James Carman. His appeal was not filed with the Board within the statutorily-required 30 days. RCW 43.21B.310. "Filed" means received by the Board. WAC 371-08-080. Therefore, the Department's Motion to Dismiss should be granted. Meridian Aggregates Co. v. DOE, PCHB No. 88-149. However, given Mr. Carman's mental state, this dismissal is a close decision. In the interests of justice, and since a full hearing on the merits was held with all the parties represented and participating, it is advisable to issue a full range of conclusions.

II

It is unlawful to construct a well without complying with water well construction rules. RCW 18.104.030. See, Ponderosa Drilling and Development v. DOE, PCHB 85-212; O'Connell v. DOE, PCHB 89-124. The construction rules are predominanatly found in Chapt 173-160 WAC, and in Chapt. 508-12 WAC.

WAC 173-160-075 states:

In constructing, developing, redeveloping or conditioning a well, care shall be taken to preserve the natural barriers to ground water movement between aquifers and to seal aquifers or strata penetrated during drilling operations which might impair water quality or result in cascading water. All sealing should be permanent and shall prevent movement of surface, or ground water into the annular space. Sealing shall prevent the upward movement of artesian waters within the annular space around the well casing, to prevent the contamination or wasting of ground water. Sealing shall prevent the movement of ground water either upward or downward from zones that were cased off because of poor quality. When cement grout is used in sealing, it shall be set in place seventy-two hours before additional drilling takes place, unless special additives are mixed with the grout that cause it to set in a shorter period of time. All grouting shall be performed by tremmying the mixture from the bottom of the annular space to the surface in one continuous operation. The annular space to be grouted shall be a minimum four inches larger than the permanent casing.

When casing diameter is reduced, a minimum of eight feet of casing overlap is required and the bottom of the annular space between the casings shall be sealed with a watertight packer; the remainder of the annular space must be pressure grouted with bentonite or neat cement.

III

"Aquifer" is:

any geologic formation that will yield water to a well [...] in sufficient quantity for beneficial use. WAC 173-154-040(4).

An "artesian well" is defined as:

...a well tapping an aquifer bounded above and below by impermeable beds or beds of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells. WAC 173-160-030(5).

"Cascading waters" include any ground waters which flow from one ground water aquifer to another. WAC 173-154-040(9).

We conclude that the Barnetts had an artesian well with cascading waters. Carman was aware that the area had artesian wells, yet he did not have casing on-hand for more than 40 feet and he drilled to 210 feet, penetrating at least two aquifers.

IV

The construction of the Barnetts' well violated several provisions of Chapt. 173-160 WAC.

WAC 173-160-285 requires that:

When artesian water is encountered, an unperforated well casing shall extend into the confining stratum overlying the artesian zone. The casing shall be sealed into the confining stratum to prevent surface and subsurface leakage from the artesian zone.[...] The well shall be completed with seals, packers or grout that eliminates leakage around the well casing.[...]

1 The well was constructed in a manner allowing inter-aquifer transfer,
2 violating WAC 173-160-075 and -285.

3 In addition, WAC 173-160-075 requires a well hole be at least 4
4 inches larger in diameter than the permanent casing. This did not
5 occur.

6 This 4 inch minimum is required to be grouted all the way around.
7 WAC 173-160-075. This was not done. In addition, the grout was not
8 tremmed from the bottom of the annular space, again violating WAC
9 173-160-075.

10 It is clear the well was not properly sealed.

11 V

12 A start-card was not filed with the Department of Ecology 72 hours
13 before drilling was started, violating WAC 173-160-055. The Department
14 did not receive notice until December 11, 1989 and drilling occurred
15 without the Department having notice and being able to oversee the
16 operation.

17 VI

18 We turn now to the issue of whether the orders were directed to
19 the proper parties.

20 WAC 173-160-020 states:

21 *[...]It is the responsibility of the water well*
22 *contractor and the property owner to take whatever*
23 *measures are necessary to guard against waste and*
24 *contamination of the ground water resources.*

1 Strict compliance with well drilling standards is required,
2 unless a variance is applied for in advance and granted.
3 WAC 173-160-020(2).

4 The Ground Water Code states at WAC 508-12-250(3) in pertinent
5 part:

6 *Where the waste of water through improperly*
7 *constructed wells has been found and wasting of said*
8 *water...threatens permanent damage to the aquifer,*
9 *the department of ecology shall direct the owner to*
10 *make necessary repairs to correct the situation.*
11 *(RCW 90.44.120.)*

12 VII

13 If the Board had jurisdiction over James Carman, we would
14 conclude Order No. DE 90-C129 was properly directed to him. This
15 licensed well driller constructed the well in clear disregard of the
16 law.

17 VIII

18 The statute, Chapt. 90.44 RCW, and implementing regulations are
19 designed to prevent harm to the public interest. Strict compliance is
20 required. The statutes and regulations are clear; strict liability
21 applies. When language is clear, the Board will not engage in
22 statutory construction.

23 Atlas Well Drilling and Exploration, Inc., at all times relevant
24 here, was a well drilling contractor licensed to do business in the
25 State of Washington. As late as October 1989 it renewed its bond so
26 as to be able to do business in Washington. The company allowed Mr.

1 Carman to have its vehicles and equipment, complete with company logos
2 on the outside, while it negotiated with him to buy the business, the
3 equipment, or to have him sell it to others. They allowed him to have
4 company contract forms. Mr. Carman may have been a "loose cannon",
5 but Atlas allowed and even facilitated this. Under the State water
6 code, Atlas is responsible for Carman's conduct. WAC 173-160-020.
7 The Department lawfully directed Order No. DE 89-C142 to Atlas. RCW
8 43.27A.190. Atlas' serious inattention to business caused harm to the
9 public.

10 Principles of agency are simply not applicable in the water
11 code's statutory framework. Even if we were to reach that issue, we
12 would conclude that Atlas created apparent authority in Carman such
13 that reasonable persons of ordinary prudence had a right to rely on
14 that agency. Taylor v. Smith, 13 Wn. App. 171, 534 P.2d 39 (1975).
15 Clearly their conduct harmed the Barnetts.

16 IX

17 Under the regulations, the Department had the authority to direct
18 an order to the Barnetts. The Barnetts own the property on which the
19 well is located. As the landowners they are required to take whatever
20 measures are necessary to guard against waste and contamination of
21 ground waters. WAC 173-160-020. Moreover, access to their property
22 is necessary in order to correct the problem.

23 However, the Barnetts' situation is compelling, given their
24 relative lack of knowledge of this field compared to the other
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1 parties, their fixed income and expenditures to-date for an improper
2 well. The Department is not prevented in the exercise of its
3 discretion from considering these factors in determining whom to first
4 turn to correct the problem, after the issuance of this decision.

5 Whether any appellant has a civil cause of action against others
6 for monetary losses, is a legal issue beyond this Board's jurisdiction.

7 X

8 The Barnetts contend that the well need not be abandoned, but can
9 be rehabilitated. Appellants have provided no facts on how and when
10 such rehabilitation would occur. An expeditious correction of the
11 problem is important. DOE concedes that it is possible to do so, but
12 it would be extremely costly.

13 The Department in the exercise of its discretion chose to issue
14 abandonment orders. We will not disturb that decision given the facts
15 presented.

16 X

17 Any Finding of Fact deemed to be a Conclusion of Law is adopted
18 as such.

19 From the foregoing the Board enters this:
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ORDER

James David Carman's appeal of Order DE No. 89-C129 is DISMISSED.
Order No DE 89-C143 issued to Atlas Well Drilling and Exploration,
Inc., and Order No. DE 89-C142 are AFFIRMED.
DONE this 16th day of January 1991.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Chair


HAROLD S. ZIMMERMAN, Member

0094B

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7 On April 6, 1990 DOE issued Order No. DE 90-C143 to the Barnetts
8 and DE 90-C142 to Atlas. The Orders required the well to be abandoned
9 in accordance with Chapt. 173-160 WAC. The Barnetts' appeal to the
10 Pollution Control Hearings Board became PCHB No. 90-70. The Atlas
11 appeal became PCHB 90-72.

12 On April 6, 1990 DOE issued Order No. DE 90-129 to James David
13 Carman, also requiring well abandonment. On April 9, 1990 Carman
14 personally received a copy of the order during a visit to the DOE
15 regional office in Yakima. The Board sent a letter on April 25, 1990
16 to: the Barnetts, Atlas' lawyer, the DOE, and Mr. Carman at an Idaho
17 address, consolidating the Barnett and Atlas appeals and noting that
18 Carman had not yet filed an appeal. The Board received Carman's
19 appeal on Friday, May 10, 1990, 31 days after April 9, 1990. All
20 parties or their representatives were present during telephone
21 pre-hearing conference on May 21, 1990 and June 7, 1990. Carman was
22 in the hospital for two weeks with a nervous breakdown, leaving in
23 June, 1990.

IX

DOE's expert testified that the well should be properly abandoned. However, he also conceded that it could be properly rehabilitated, though at considerable expense. Appellants provided no factual evidence on rehabilitation.

X

Any Conclusion of Law deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board makes these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues, and over appellants Barnett and Atlas Drilling and Exploration, Inc. RCW 18.104.130; WAC 173-160-125, and RCW 43.21B.310.

The Board concludes it does not have jurisdiction over James Carman. His appeal was not filed with the Board within the statutorily-required 30 days. RCW 43.21B.310. "Filed" means received by the Board. WAC 371-08-080. Therefore, the Department's Motion to Dismiss should be granted. Meridian Aggregates Co. v. DOE, PCHB No. 88-149. However, given Mr. Carman's mental state, this dismissal is a close decision. In the interests of justice, and since a full hearing on the merits was held with all the parties represented and participating, it is advisable to issue a full range of conclusions.

II

It is unlawful to construct a well without complying with water well construction rules. RCW 18.104.030. See, Ponderosa Drilling and Development v. DOE, PCHB 85-212; O'Connell v. DOE, PCHB 89-124. The construction rules are predominanatly found in Chapt 173-160 WAC, and in Chapt. 508-12 WAC.

WAC 173-160-075 states:

In constructing, developing, redeveloping or conditioning a well, care shall be taken to preserve the natural barriers to ground water movement between aquifers and to seal aquifers or strata penetrated during drilling operations which might impair water quality or result in cascading water. All sealing should be permanent and shall prevent movement of surface, or ground water into the annular space. Sealing shall prevent the upward movement of artesian waters within the annular space around the well casing, to prevent the contamination or wasting of ground water. Sealing shall prevent the movement of ground water either upward or downward from zones that were cased off because of poor quality. When cement grout is used in sealing, it shall be set in place seventy-two hours before additional drilling takes place, unless special additives are mixed with the grout that cause it to set in a shorter period of time. All grouting shall be performed by tremmying the mixture from the bottom of the annular space to the surface in one continuous operation. The annular space to be grouted shall be a minimum four inches larger than the permanent casing.

When casing diameter is reduced, a minimum of eight feet of casing overlap is required and the bottom of the annular space between the casings shall be sealed with a watertight packer; the remainder of the annular space must be pressure grouted with bentonite or neat cement.

III

"Aquifer" is:

any geologic formation that will yield water to a well [...] in sufficient quantity for beneficial use. WAC 173-154-040(4).

An "artesian well" is defined as:

...a well tapping an aquifer bounded above and below by impermeable beds or beds of distinctly lower permeability than the aquifer itself. The water will rise in the well above the point of initial penetration (above the bottom of the confining or impermeable layer overlying the aquifer). This term includes both flowing and nonflowing wells. WAC 173-160-030(5).

"Cascading waters" include any ground waters which flow from one ground water aquifer to another. WAC 173-154-040(9).

We conclude that the Barnetts had an artesian well with cascading waters. Carman was aware that the area had artesian wells, yet he did not have casing on-hand for more than 40 feet and he drilled to 210 feet, penetrating at least two aquifers.

IV

The construction of the Barnetts' well violated several provisions of Chapt. 173-160 WAC.

WAC 173-160-285 requires that:

When artesian water is encountered, an unperforated well casing shall extend into the confining stratum overlying the artesian zone. The casing shall be sealed into the confining stratum to prevent surface and subsurface leakage from the artesian zone.[...] The well shall be completed with seals, packers or grout that eliminates leakage around the well casing.[...]

1 The well was constructed in a manner allowing inter-aquifer transfer,
2 violating WAC 173-160-075 and -285.

3 In addition, WAC 173-160-075 requires a well hole be at least 4
4 inches larger in diameter than the permanent casing. This did not
5 occur.

6 This 4 inch minimum is required to be grouted all the way around.
7 WAC 173-160-075. This was not done. In addition, the grout was not
8 tremmed from the bottom of the annular space, again violating WAC
9 173-160-075.

10 It is clear the well was not properly sealed.

11 V

12 A start-card was not filed with the Department of Ecology 72 hours
13 before drilling was started, violating WAC 173-160-055. The Department
14 did not receive notice until December 11, 1989 and drilling occurred
15 without the Department having notice and being able to oversee the
16 operation.

17 VI

18 We turn now to the issue of whether the orders were directed to
19 the proper parties.

20 WAC 173-160-020 states:

21 *[...]It is the responsibility of the water well*
22 *contractor and the property owner to take whatever*
23 *measures are necessary to guard against waste and*
24 *contamination of the ground water resources.*

1 Strict compliance with well drilling standards is required,
2 unless a variance is applied for in advance and granted.
3 WAC 173-160-020(2).

4 The Ground Water Code states at WAC 508-12-250(3) in pertinent
5 part:

6 *Where the waste of water through improperly*
7 *constructed wells has been found and wasting of said*
8 *water...threatens permanent damage to the aquifer,*
9 *the department of ecology shall direct the owner to*
10 *make necessary repairs to correct the situation.*
11 *(RCW 90.44.120.)*

12 VII

13 If the Board had jurisdiction over James Carman, we would
14 conclude Order No. DE 90-C129 was properly directed to him. This
15 licensed well driller constructed the well in clear disregard of the
16 law.

17 VIII

18 The statute, Chapt. 90.44 RCW, and implementing regulations are
19 designed to prevent harm to the public interest. Strict compliance is
20 required. The statutes and regulations are clear; strict liability
21 applies. When language is clear, the Board will not engage in
22 statutory construction.

23 Atlas Well Drilling and Exploration, Inc., at all times relevant
24 here, was a well drilling contractor licensed to do business in the
25 State of Washington. As late as October 1989 it renewed its bond so
26 as to be able to do business in Washington. The company allowed Mr.

1 Carman to have its vehicles and equipment, complete with company logos
2 on the outside, while it negotiated with him to buy the business, the
3 equipment, or to have him sell it to others. They allowed him to have
4 company contract forms. Mr. Carman may have been a "loose cannon",
5 but Atlas allowed and even facilitated this. Under the State water
6 code, Atlas is responsible for Carman's conduct. WAC 173-160-020.
7 The Department lawfully directed Order No. DE 89-C142 to Atlas. RCW
8 43.27A.190. Atlas' serious inattention to business caused harm to the
9 public.

10 Principles of agency are simply not applicable in the water
11 code's statutory framework. Even if we were to reach that issue, we
12 would conclude that Atlas created apparent authority in Carman such
13 that reasonable persons of ordinary prudence had a right to rely on
14 that agency. Taylor v. Smith, 13 Wn. App. 171, 534 P.2d 39 (1975).
15 Clearly their conduct harmed the Barnetts.

16 IX

17 Under the regulations, the Department had the authority to direct
18 an order to the Barnetts. The Barnetts own the property on which the
19 well is located. As the landowners they are required to take whatever
20 measures are necessary to guard against waste and contamination of
21 ground waters. WAC 173-160-020. Moreover, access to their property
22 is necessary in order to correct the problem.

23 However, the Barnetts' situation is compelling, given their
24 relative lack of knowledge of this field compared to the other
25
26

1 parties, their fixed income and expenditures to-date for an improper
2 well. The Department is not prevented in the exercise of its
3 discretion from considering these factors in determining whom to first
4 turn to correct the problem, after the issuance of this decision.

5 Whether any appellant has a civil cause of action against others
6 for monetary losses, is a legal issue beyond this Board's jurisdiction.

7 X

8 The Barnetts contend that the well need not be abandoned, but can
9 be rehabilitated. Appellants have provided no facts on how and when
10 such rehabilitation would occur. An expeditious correction of the
11 problem is important. DOE concedes that it is possible to do so, but
12 it would be extremely costly.

13 The Department in the exercise of its discretion chose to issue
14 abandonment orders. We will not disturb that decision given the facts
15 presented.

16 X

17 Any Finding of Fact deemed to be a Conclusion of Law is adopted
18 as such.

19 From the foregoing the Board enters this:
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ORDER

James David Carman's appeal of Order DE No. 89-C129 is DISMISSED.
Order No DE 89-C143 issued to Atlas Well Drilling and Exploration,
Inc., and Order No. DE 89-C142 are AFFIRMED.
DONE this ^{ten}10 day of January 1991.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Chair


HAROLD S. ZIMMERMAN, Member